

# Adopted by House 4-12-2013

SB444 HFIN AM 4-10 as amended

The Committee on Finance moves to amend the bill on page one, by striking out everything after the enacting clause, and inserting in lieu thereof the following:

"That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2A-1 and §18B-2A-3 of said code be amended and reenacted; and that §18B-7-11 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 1. STATE DEPOSITORIES.**

#### **§12-1-12d. Investments by Marshall University and West Virginia University.**

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University and West Virginia University each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. ~~Any such~~ The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing university.

1           (c) Moneys of a university that may be invested with its  
2 foundation pursuant to this section are those subject to the  
3 administrative control of the university that are collected under  
4 an act of the Legislature for specific purposes and do not include  
5 any funds made available to the university from the State General  
6 Revenue Fund or the funds established in sections eighteen or  
7 eighteen-a, article twenty-two, chapter twenty-nine of this code.  
8 Moneys permitted to be invested under this section may be  
9 aggregated in an investment fund for investment purposes.

10           (d) Of the moneys authorized for investment by this section,  
11 Marshall University and West Virginia University each,  
12 respectively, may have invested with its foundation at any time not  
13 more than the greater of:

14           (1) \$18 million for Marshall University and \$25 million for  
15 West Virginia University; or

16           (2) Sixty-five percent of its unrestricted net assets as  
17 presented in the statement of net assets for the fiscal year end  
18 audited financial reports.

19           (3) Notwithstanding subdivisions (1) and (2) of this  
20 subsection, with the approval of the Higher Education Policy  
21 Commission, Marshall University may increase the amount invested to  
22 ~~\$30~~ \$60 million and West Virginia University may increase the  
23 amount invested to ~~\$40~~ \$70 million.

24           (e) Investments by foundations that are authorized under this  
25 section shall be made in accordance with and subject to the  
26 provisions of the Uniform Prudent Investor Act codified as article

1 six-c, chapter forty-four of this code. As part of its fiduciary  
2 responsibilities, each governing board shall establish investment  
3 policies in accordance with the Uniform Prudent Investor Act for  
4 those moneys invested with its foundation. The governing board  
5 shall review, establish and modify, if necessary, the investment  
6 objectives as incorporated in its investment policies so as to  
7 provide for the financial security of the moneys invested with its  
8 foundation. The governing boards shall give consideration to the  
9 following:

10 (1) Preservation of capital;

11 (2) Diversification;

12 (3) Risk tolerance;

13 (4) Rate of return;

14 (5) Stability;

15 (6) Turnover;

16 (7) Liquidity; and

17 (8) Reasonable cost of fees.

18 (f) A governing board shall report annually by December 31 to  
19 the Governor and to the Joint Committee on Government and Finance  
20 on the performance of investments managed by its foundation  
21 pursuant to this section.

22 (g) The amendments to this section in the second extraordinary  
23 session of the Legislature in 2010 ~~shall~~ apply retroactively so  
24 that the authority granted by this section shall be construed as if  
25 that authority did not expire on July 1, 2010.

26 **ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

1   **§18B-2A-1. Findings; composition of boards; terms and**  
2       **qualifications of members; vacancies; eligibility for**  
3       **reappointment.**

4       (a) *Findings.* -

5       The Legislature finds that the State of West Virginia is  
6       served best when the membership of each governing board includes  
7       the following:

8           (1) The academic expertise and institutional experience of  
9       faculty members and a student of the institution governed by the  
10      board;

11          (2) The technical or professional expertise and institutional  
12      experience of a classified employee of the institution governed by  
13      the board;

14          (3) An awareness and understanding of the issues facing the  
15      institution governed by the board; and

16          (4) The diverse perspectives that arise from a membership that  
17      is balanced in terms of gender and varied in terms of race and  
18      ethnic heritage.

19      (b) *Boards of governors established.* -

20      A board of governors is continued at each of the following  
21      institutions: Bluefield State College, Blue Ridge Community and  
22      Technical College, Bridgemont Community and Technical College,  
23      Concord University, Eastern West Virginia Community and Technical  
24      College, Fairmont State University, Glenville State College,  
25      Kanawha Valley Community and Technical College, Mountwest Community

1 and Technical College, Marshall University, New River Community and  
2 Technical College, Pierpont Community and Technical College,  
3 Shepherd University, Southern West Virginia Community and Technical  
4 College, West Liberty University, West Virginia Northern Community  
5 and Technical College, the West Virginia School of Osteopathic  
6 Medicine, West Virginia State University, West Virginia University  
7 and West Virginia University at Parkersburg.

8 (c) *Board membership.* -

9 (1) An appointment to fill a vacancy on the board or  
10 reappointment of a member who is eligible to serve an additional  
11 term is made in accordance with the provisions of this section.

12 (2) The Board of Governors for Marshall University consists of  
13 sixteen persons. The Board of Governors for West Virginia  
14 University consists of seventeen persons. The boards of governors  
15 of the other state institutions of higher education consist of  
16 twelve persons.

17 (3) Each board of governors includes the following members:

18 (A) A full-time member of the faculty with the rank of  
19 instructor or above duly elected by the faculty of the respective  
20 institution;

21 (B) A member of the student body in good academic standing,  
22 enrolled for college credit work and duly elected by the student  
23 body of the respective institution; and

24 (C) A member from the institutional classified employees duly  
25 elected by the classified employees of the respective institution;

26 (4) For the Board of Governors at Marshall University,

1 thirteen lay members appointed by the Governor, by and with the  
2 advice and consent of the Senate, pursuant to this section;

3 (5) For the Board of Governors at West Virginia University,  
4 twelve lay members appointed by the Governor, by and with the  
5 advice and consent of the Senate, pursuant to this section, and  
6 additionally:

7 (A) The Chairperson of the Board of Visitors of West Virginia  
8 University Institute of Technology;

9 (B) A full-time faculty member representing the extension  
10 service at the institution or a full-time faculty member  
11 representing the health sciences, selected by the faculty senate.

12 (6) For each board of governors of the other state  
13 institutions of higher education, nine lay members appointed by the  
14 Governor, by and with the advice and consent of the Senate,  
15 pursuant to this section.

16 (A) Of the nine members appointed by the Governor, no more  
17 than five may be of the same political party. Of the thirteen  
18 members appointed by the Governor to the governing board of  
19 Marshall University, no more than eight may be of the same  
20 political party. Of the twelve members appointed by the Governor  
21 to the governing board of West Virginia University, no more than  
22 seven may be of the same political party.

23 (B) Of the nine members appointed by the Governor, at least  
24 five shall be residents of the state. Of the thirteen members  
25 appointed by the Governor to the governing board of Marshall  
26 University, at least eight shall be residents of the state. Of the

1 twelve members appointed by the Governor to the governing board of  
2 West Virginia University, at least seven shall be residents of the  
3 state.

4 (7) In making lay appointments, the Governor shall consider  
5 the institutional mission and membership characteristics including  
6 the following:

7 (A) The need for individual skills, knowledge and experience  
8 relevant to governing the institution;

9 (B) The need for awareness and understanding of institutional  
10 problems and priorities, including those related to research,  
11 teaching and outreach;

12 (C) The value of gender, racial and ethnic diversity; and

13 (D) The value of achieving balance in gender and diversity in  
14 the racial and ethnic characteristics of the lay membership of each  
15 board.

16 (d) *Board member terms.* -

17 (1) The student member serves for a term of one year. Each  
18 term begins on July 1.

19 (2) The faculty member serves for a term of two years. Each  
20 term begins on July 1. Faculty members are eligible to succeed  
21 themselves for three additional terms, not to exceed a total of  
22 eight consecutive years.

23 (3) The member representing classified employees serves for a  
24 term of two years. Each term begins on July 1. Members  
25 representing classified employees are eligible to succeed  
26 themselves for three additional terms, not to exceed a total of

1 eight consecutive years.

2 (4) The appointed lay citizen members serve terms of ~~up to~~  
3 four years each and are eligible to succeed themselves for no more  
4 than one additional term, except that citizen members who are  
5 appointed to fill unexpired terms are eligible to succeed  
6 themselves for two full terms after completing an unexpired term.

7 (5) A vacancy in an unexpired term of a member shall be filled  
8 for the unexpired term within thirty days of the occurrence of the  
9 vacancy in the same manner as the original appointment or election.  
10 Except in the case of a vacancy, all elections are held and all  
11 appointments are made no later than June 30 preceding the  
12 commencement of the term. Each board of governors shall elect one  
13 of its appointed lay members to be chairperson in June of each  
14 year. A member may not serve as chairperson for more than four  
15 consecutive years.

16 (6) The appointed members of the boards of governors serve  
17 staggered terms of up to four years except that four of the initial  
18 appointments to the governing boards of community and technical  
19 colleges that became independent July 1, 2008, are for terms of two  
20 years and five of the initial appointments are for terms of four  
21 years.

22 (e) *Board member eligibility, expenses.* -

23 (1) A person is ineligible for appointment to membership on a  
24 board of governors of a state institution of higher education under  
25 the following conditions:

26 (A) For a baccalaureate institution or university, a person is



ineligible for appointment who is an officer, employee or member of any other board of governors; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or the superintendent of a county board of education from being members of the governing boards.

(B) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of a board of visitors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or

1 commission. This subsection does not prevent the representative  
2 from the faculty, classified employees or students from being  
3 members of the governing boards.

4 (2) Before exercising any authority or performing any duties  
5 as a member of a governing board, each member shall qualify as such  
6 by taking and subscribing to the oath of office prescribed by  
7 section five, article IV of the Constitution of West Virginia and  
8 the certificate thereof shall be filed with the Secretary of State.

9 (3) A member of a governing board appointed by the Governor  
10 may not be removed from office by the Governor except for official  
11 misconduct, incompetence, neglect of duty or gross immorality and  
12 then only in the manner prescribed by law for the removal of the  
13 state elective officers by the Governor.

14 (4) The members of the board of governors serve without  
15 compensation, but are reimbursed for all reasonable and necessary  
16 expenses actually incurred in the performance of official duties  
17 under this article upon presentation of an itemized sworn statement  
18 of expenses.

19 (5) The president of the institution shall make available  
20 resources of the institution for conducting the business of its  
21 board of governors. All expenses incurred by the board of  
22 governors and the institution under this section are paid from  
23 funds allocated to the institution for that purpose.

24 **§18B-2A-3. Supervision of governing boards; promulgation of rules;**  
25 **data collection and dissemination.**

26 (a) The governing boards are subject to the supervision of the

1 commission or the council, as appropriate, except in those  
2 instances where specific statutory exceptions are granted by law to  
3 the governing boards of Marshall University and West Virginia  
4 University.

5 (b) The governing boards of all state institutions of higher  
6 education are subject to the provisions of law that relate to the  
7 administration of personnel matters including, specifically,  
8 articles seven, eight, nine and nine-a of this chapter and to rules  
9 promulgated and adopted in accordance with these provisions.

10 (c) The Chancellor for Higher Education and the Chancellor for  
11 Community and Technical College Education, under the supervision of  
12 their respective boards, are responsible for the coordination of  
13 policies, purposes and rules of the governing boards and shall  
14 provide for and facilitate sufficient interaction among the  
15 governing boards and between the governing boards and the State  
16 Board of Education to meet the goals and objectives provided in the  
17 compacts and in section one-a, article one and article one-d of  
18 this chapter.

19 (d) The governing boards and the State Board of Education  
20 shall provide all information requested by the commission and the  
21 council, whether the request is made separately or jointly, in an  
22 appropriate format and in a timely manner.

23 (1) Each governing board shall cooperate with the West  
24 Virginia Network for Educational Telecomputing (WVNET) in designing  
25 appropriate interfaces with the databases of institutions under its  
26 jurisdiction and shall grant WVNET direct access to these

1 databases.

2 (2) WVNET, on behalf of the commission or council or both,  
3 shall generate reports from the data accessed for the purposes set  
4 forth in section five, article one-a and sections eight and ten,  
5 article one-d of this chapter.

6 (3) All data accessed or received from an institution shall be  
7 treated in a manner consistent with the privacy protections  
8 outlined in section ten, article one-d of this chapter.

9 **ARTICLE 7. PERSONNEL GENERALLY.**

10 **§18B-7-11. Employees designated as nonclassified; limits;**  
11 **exceptions; reports required.**

12 (a) Notwithstanding any provision of this code to the  
13 contrary, by July 1, 2015, the percentage of personnel placed in  
14 the category of nonclassified at a higher education organization  
15 may not exceed twenty percent of the total number of classified and  
16 nonclassified employees of that organization as those terms are  
17 defined in section two, article nine-a of this chapter and who are  
18 eligible for membership in a state retirement system of the State  
19 of West Virginia or other retirement plan authorized by the state.

20 A higher education organization which has more than twenty  
21 percent of its employees placed in the nonclassified category as  
22 defined by this subsection on July 1, 2011, shall reduce the number  
23 of nonclassified employees to no more than twenty-five percent by  
24 July 1, 2013, and to no more than twenty percent by July 1, 2015,  
25 except as set forth in subsections (b) and (c) of this section.

1 (b) For the purpose of determining the ratio of nonclassified  
2 employees pursuant to this section, the following conditions apply:

3 (1) ~~Employees of the commission and the chancellor for higher~~  
4 ~~education and employees of the council and the chancellor for~~  
5 ~~community and technical college education are considered as one~~  
6 ~~organization;~~

7 ~~(2)~~ Organizations ~~may~~ shall count ~~as~~ faculty or classified  
8 employees, respectively, ~~administrators~~ who retain the right to  
9 return to faculty or classified employee positions, ~~and~~ in the  
10 employee category they are serving in at the time of reporting as  
11 required by subsections (a) and (b), section eight of this article.  
12 Such employees will be counted in their original category at such  
13 time as they exercise their return rights.

14 ~~(3)~~ (2) Athletic coaches are excluded from calculation of the  
15 ratio. The commission and the council shall include consideration  
16 of this employee category in each review required by section nine  
17 of this article and shall monitor organizations' use of this  
18 category and include this information in the reports required by  
19 subsections (a) and (b), section eight of this article.

20 (c) An organization may place up to twenty-five percent of the  
21 total number of classified and nonclassified employees of that  
22 organization as defined by this section in the nonclassified  
23 category under the following conditions:

24 (1) The governing board of an institution votes to approve any  
25 percentage or fraction of a percentage number above twenty percent  
26 and seeks and receives the approval of the commission or council,

1 as appropriate, before increasing the total above twenty percent.

2 ~~(2) In the case of personnel employed by the commission and~~  
3 ~~the council, the chancellors jointly shall agree to increase the~~  
4 ~~percentage number or fraction of a number of nonclassified~~  
5 ~~employees beyond twenty percent and shall recommend this action to~~  
6 ~~their respective boards for approval.~~

7 (A) The commission and council each shall approve or  
8 disapprove the increase and shall include the vote, as well as  
9 details of the position and justification for placing the position  
10 in the nonclassified category, in its minute record.

11 (B) The number of nonclassified personnel may not be increased  
12 above twenty percent unless the increase is approved by both the  
13 commission and the council.

14 ~~(3)~~ (2) *Powers and duties of commission and council regarding*  
15 *nonclassified staff ratios. -*

16 (A) It is the duty of the commission and council jointly to  
17 establish criteria for the purpose of making decisions on approving  
18 or disapproving requests by organizations to exceed the twenty  
19 percent limit for personnel placed in the nonclassified category;

20 (B) The commission and council shall provide technical  
21 assistance to organizations under their respective jurisdictions in  
22 collecting and interpreting data to ensure that they fulfill the  
23 requirements established by this section. Consideration of these  
24 issues shall be made part of each review required by section nine  
25 of this article and information from the review included in the  
26 reports required by subsections (a) and (b), section eight of this

1 article;

2 (C) The chancellors shall monitor the progress of the  
3 organizations in meeting the deadlines established in this section  
4 and shall report periodically to the council and commission. The  
5 commission and council shall make a preliminary compliance report  
6 to the Legislative Oversight Commission on Education Accountability  
7 by September 1, 2013, and a final report on organization compliance  
8 to that body by September 1, 2015.

9 (D) Subject to a joint recommendation by the commission and  
10 the council and subsequent affirmative action by the Legislature to  
11 extend the authority beyond the specified date of termination, the  
12 authority of an organization to place more than twenty percent of  
13 its personnel in the nonclassified category pursuant to this  
14 section expires on July 1, 2016.

15 (d) The current annual salary of a nonclassified employee may  
16 not be reduced if his or her position is redefined as a classified  
17 position solely to meet the requirements of this section. If such  
18 a nonclassified employee is reclassified, his or her salary does  
19 not constitute evidence of inequitable compensation in comparison  
20 to other employees in the same paygrade.

21 (e) For the purposes of this section only the commission and  
22 council are not considered higher education organizations.